

1                                    AMENDMENT TO HOUSE BILL 1195

2            AMENDMENT NO. \_\_\_\_\_. Amend House Bill 1195, AS AMENDED,  
3 by replacing everything after the enacting clause with the  
4 following:

5            "Section 1. Short title. This Act may be cited as the  
6 Fire Department Promotion Act.

7            Section 5. Definitions. In this Act:

8            "Affected department" or "department" means a full-time  
9 municipal fire department that is subject to a collective  
10 bargaining agreement or the fire department operated by a  
11 full-time fire protection district. The terms do not include  
12 fire departments operated by the State, a university, or a  
13 municipality with a population over 1,000,000 or any unit of  
14 local government other than a municipality or fire protection  
15 district. The terms also do not include a combined department  
16 that was providing both police and firefighting services on  
17 January 1, 2002.

18            "Appointing authority" means the Board of Fire and Police  
19 Commissioners, Board of Fire Commissioners, Civil Service  
20 Commissioners, Superintendent or Department Head, Fire  
21 Protection District Board of Trustees, or other entity having  
22 the authority to administer and grant promotions in an

1 affected department.

2 "Promotion" means any appointment or advancement to a  
3 rank within the affected department (1) for which an  
4 examination was required before January 1, 2002; (2) that is  
5 included within a bargaining unit; or (3) that is the next  
6 rank immediately above the highest rank included within a  
7 bargaining unit, provided such rank is not the only rank  
8 between the Fire Chief and the highest rank included within  
9 the bargaining unit, or is a rank otherwise excepted under  
10 item (i), (ii), (iii), (iv), or (v) of this definition.

11 "Promotion" does not include appointments (i) that are for  
12 fewer than 180 days; (ii) to the positions of Superintendent,  
13 Chief, or other chief executive officer; (iii) to an  
14 exclusively administrative or executive rank for which an  
15 examination is not required; (iv) to a rank that was exempted  
16 by a home rule municipality prior to January 1, 2002,  
17 provided that after the effective date of this Act no home  
18 rule municipality may exempt any future or existing ranks  
19 from the provisions of this Act; or (v) to an administrative  
20 rank immediately below the Superintendent, Chief, or other  
21 chief executive officer of an affected department, provided  
22 such rank shall not be held by more than 2 persons and there  
23 is a promoted rank immediately below it. Notwithstanding the  
24 exceptions to the definition of "promotion" set forth in  
25 items (i), (ii), (iii), (iv), and (v) of this definition,  
26 promotions shall include any appointments to ranks covered by  
27 the terms of a collective bargaining agreement in effect on  
28 the effective date of this Act.

29 "Preliminary promotion list" means the rank order of  
30 eligible candidates established in accordance with subsection  
31 (b) of Section 20 prior to applicable veteran's preference  
32 points. A person on the preliminary promotion list who is  
33 eligible for veteran's preference under the laws and  
34 agreements applicable to the appointing authority may file a

1 written application for that preference within 10 days after  
2 the initial posting of the preliminary promotion list. The  
3 preference shall be calculated in accordance with Section 55  
4 and applied as an addition to the person's total point score  
5 on the examination. The appointing authority shall make  
6 adjustments to the preliminary promotion list based on any  
7 veteran's preference claimed and the final adjusted promotion  
8 list shall then be posted by the appointing authority.

9 "Rank" means any position within the chain of command of  
10 a fire department to which employees are regularly assigned  
11 to perform duties related to providing fire suppression, fire  
12 prevention, or emergency services.

13 "Final adjusted promotion list" means the promotion list  
14 for the position that is in effect on the date the position  
15 is created or the vacancy occurs. If there is no final  
16 adjusted promotion list in effect for that position on that  
17 date, or if all persons on the current final adjusted  
18 promotion list for that position refuse the promotion, the  
19 affected department shall not make a permanent promotion  
20 until a new final adjusted promotion list has been prepared  
21 in accordance with this Act, but may make a temporary  
22 appointment to fill the vacancy. Temporary appointments shall  
23 not exceed 180 days.

24 Each component of the promotional test shall be scored on  
25 a scale of 100 points. The component scores shall then be  
26 reduced by the weighting factor assigned to the component on  
27 the test and the scores of all components shall be added to  
28 produce a total score based on a scale of 100 points.

29 Section 10. Applicability.

30 (a) This Act shall apply to all positions in an affected  
31 department, except those specifically excluded in items (i),  
32 (ii), (iii), (iv), and (v) of the definition of "promotion"  
33 in Section 5 unless such positions are covered by a

1 collective bargaining agreement in force on the effective  
2 date of this Act. Existing promotion lists shall continue to  
3 be valid until their expiration dates, or up to a maximum of  
4 3 years after the effective date of this Act.

5 (b) Notwithstanding any statute, ordinance, rule, or  
6 other laws to the contrary, all promotions in an affected  
7 department to which this Act applies shall be administered in  
8 the manner provided for in this Act. Provisions of the  
9 Illinois Municipal Code, the Fire Protection District Act,  
10 municipal ordinances, or rules adopted pursuant to such  
11 authority and other laws relating to promotions in affected  
12 departments shall continue to apply to the extent they are  
13 compatible with this Act, but in the event of conflict  
14 between this Act and any other law, this Act shall control.

15 (c) A home rule or non-home rule municipality may not  
16 administer its fire department promotion process in a manner  
17 that is inconsistent with this Act. This Section is a  
18 limitation under subsection (i) of Section 6 of Article VII  
19 of the Illinois Constitution on the concurrent exercise by  
20 home rule units of the powers and functions exercised by the  
21 State.

22 (d) This Act is intended to serve as a minimum standard  
23 and shall be construed to authorize and not to limit:

24 (1) An appointing authority from establishing  
25 different or supplemental promotional criteria or  
26 components, provided that the criteria are job-related  
27 and applied uniformly.

28 (2) The negotiation by an employer and an exclusive  
29 bargaining representative of clauses within a collective  
30 bargaining agreement relating to conditions, criteria, or  
31 procedures for the promotion of employees who are members  
32 of bargaining units.

33 (3) The negotiation by an employer and an exclusive  
34 bargaining representative of provisions within a

1 collective bargaining agreement to achieve affirmative  
2 action objectives, provided that such clauses are  
3 consistent with applicable law.

4 (e) Local authorities and exclusive bargaining agents  
5 affected by this Act may agree to waive one or more of its  
6 provisions and bargain on the contents of those provisions,  
7 provided that any such waivers shall be considered permissive  
8 subjects of bargaining.

9 Section 15. Promotion process.

10 (a) For the purpose of granting promotion to any rank to  
11 which this Act applies, the appointing authority shall from  
12 time to time, as necessary, administer a promotion process in  
13 accordance with this Act.

14 (b) Eligibility requirements to participate in the  
15 promotional process may include a minimum requirement as to  
16 the length of employment, education, training, and  
17 certification in subjects and skills related to fire  
18 fighting. After the effective date of this Act, any such  
19 eligibility requirements shall be published at least one year  
20 prior to the date of the beginning of the promotional process  
21 and all members of the affected department shall be given an  
22 equal opportunity to meet those eligibility requirements.

23 (c) All aspects of the promotion process shall be  
24 equally accessible to all eligible employees of the  
25 department. Every component of the testing and evaluation  
26 procedures shall be published to all eligible candidates when  
27 the announcement of promotional testing is made. The scores  
28 for each component of the testing and evaluation procedures  
29 shall be disclosed to each candidate as soon as practicable  
30 after the component is completed.

31 (d) The appointing authority shall provide a separate  
32 promotional examination for each rank that is filled by  
33 promotion. All examinations for promotion shall be

1 competitive among the members of the next lower rank who meet  
2 the established eligibility requirements and desire to submit  
3 themselves to examination. The appointing authority may  
4 employ consultants to design and administer promotion  
5 examinations or may adopt any job-related examinations or  
6 study materials that may become available, so long as they  
7 comply with the requirements of this Act.

8 Section 20. Promotion lists.

9 (a) For the purpose of granting a promotion to any rank  
10 to which this Act applies, the appointing authority shall  
11 from time to time, as necessary, prepare a preliminary  
12 promotion list in accordance with this Act. The preliminary  
13 promotion list shall be distributed, posted, or otherwise  
14 made conveniently available by the appointing authority to  
15 all members of the department.

16 (b) A person's position on the preliminary promotion  
17 list shall be determined by a combination of factors which  
18 may include any of the following: (i) the person's score on  
19 the written examination for that rank, determined in  
20 accordance with Section 35; (ii) the person's seniority  
21 within the department, determined in accordance with Section  
22 40; (iii) the person's ascertained merit, determined in  
23 accordance with Section 45; and (iv) the person's score on  
24 the subjective evaluation, determined in accordance with  
25 Section 50. Candidates shall be ranked on the list in rank  
26 order based on the highest to the lowest total points scored  
27 on all of the components of the test. Promotional components,  
28 as defined herein, shall be determined and administered in  
29 accordance with the referenced Section, unless otherwise  
30 modified or agreed to as provided by paragraph (1) or (2) of  
31 subsection (e) of Section 10. The use of physical criteria,  
32 including but not limited to fitness testing, agility  
33 testing, and medical evaluations, is specifically barred from

1 the promotion process.

2 (c) A person on the preliminary promotion list who is  
3 eligible for a veteran's preference under the laws and  
4 agreements applicable to the department may file a written  
5 application for that preference within 10 days after the  
6 initial posting of the preliminary promotion list. The  
7 preference shall be calculated as provided under Section 55  
8 and added to the total score achieved by the candidate on the  
9 test. The appointing authority shall then make adjustments  
10 to the rank order of the preliminary promotion list based on  
11 any veteran's preferences awarded. The final adjusted  
12 promotion list shall then be distributed, posted, or  
13 otherwise made conveniently available by the appointing  
14 authority to all members of the department.

15 (d) Whenever a promotional rank is created or becomes  
16 vacant due to resignation, discharge, promotion, death, or  
17 the granting of a disability or retirement pension, or any  
18 other cause, the appointing authority shall appoint to that  
19 position the person with the highest ranking on the final  
20 promotion list for that rank, except that the appointing  
21 authority shall have the right to pass over that person and  
22 appoint the next highest ranked person on the list if the  
23 appointing authority has reason to conclude that the highest  
24 ranking person has demonstrated substantial shortcomings in  
25 work performance or has engaged in misconduct affecting the  
26 person's ability to perform the duties of the promoted rank  
27 since the posting of the promotion list. If the highest  
28 ranking person is passed over, the appointing authority shall  
29 document its reasons for its decision to select the next  
30 highest ranking person on the list. Unless the reasons for  
31 passing over the highest ranking person are not remedial, no  
32 person who is the highest ranking person on the list at the  
33 time of the vacancy shall be passed over more than once. Any  
34 dispute as to the selection of the first or second

1 highest-ranking person shall be subject to resolution in  
2 accordance with any grievance procedure in effect covering  
3 the employee.

4 A vacancy shall be deemed to occur in a position on the  
5 date upon which the position is vacated, and on that same  
6 date, a vacancy shall occur in all ranks inferior to that  
7 rank, provided that the position or positions continue to be  
8 funded and authorized by the corporate authorities. If a  
9 vacated position is not filled due to a lack of funding or  
10 authorization and is subsequently reinstated, the final  
11 promotion list shall be continued in effect until all  
12 positions vacated have been filled or for a period up to 5  
13 years beginning from the date on which the position was  
14 vacated. In such event, the candidate or candidates who  
15 would have otherwise been promoted when the vacancy  
16 originally occurred shall be promoted.

17 Any candidate may refuse a promotion once without losing  
18 his or her position on the final adjusted promotion list.  
19 Any candidate who refuses promotion a second time shall be  
20 removed from the final adjusted promotion list, provided that  
21 such action shall not prejudice a person's opportunities to  
22 participate in future promotion examinations.

23 (e) A final adjusted promotion list shall remain valid  
24 and unaltered for a period of not less than 2 nor more than 3  
25 years after the date of the initial posting. Integrated  
26 lists are prohibited and when a list expires it shall be  
27 void, except as provided in subsection (d) of this Section.  
28 If a promotion list is not in effect, a successor list shall  
29 be prepared and distributed within 180 days after a vacancy,  
30 as defined in subsection (d) of this Section.

31 (f) This Section 20 does not apply to the initial hiring  
32 list.

33 Section 25. Monitoring.

1 (a) All aspects of the promotion process, including  
2 without limitation the administration, scoring, and posting  
3 of scores for the written examination and subjective  
4 evaluation and the determination and posting of seniority and  
5 ascertained merit scores, shall be subject to monitoring and  
6 review in accordance with this Section and Sections 30 and  
7 50.

8 (b) Two impartial persons who are not members of the  
9 affected department shall be selected to act as observers by  
10 the exclusive bargaining agent. The appointing authorities  
11 may also select 2 additional impartial observers.

12 (c) The observers monitoring the promotion process are  
13 authorized to be present and observe when any component of  
14 the test is administered or scored. Except as otherwise  
15 agreed to in a collective bargaining agreement, observers may  
16 not interfere with the promotion process, but shall promptly  
17 report any observed or suspected violation of the  
18 requirements of this Act or an applicable collective  
19 bargaining agreement to the appointing authority and all  
20 other affected parties.

21 Section 30. Promotion examination components. Promotion  
22 examinations that include components consisting of written  
23 examinations, seniority points, ascertained merit, or  
24 subjective evaluations shall be administered as provided in  
25 Sections 35, 40, 45 and 50. The weight, if any, that is  
26 given to any component included in a test may be set at the  
27 discretion of the appointing authority provided that such  
28 weight shall be subject to modification by the terms of any  
29 collective bargaining agreement in effect on the effective  
30 date of this Act or thereafter by negotiations between the  
31 employer and an exclusive bargaining representative. If the  
32 appointing authority establishes a minimum passing score,  
33 such score shall be announced prior to the date of the

1 promotion process and it must be an aggregate of all  
2 components of the testing process. All candidates shall be  
3 allowed to participate in all components of the testing  
4 process irrespective of their score on any one component.

5 Section 35. Written examinations.

6 (a) The appointing authority may not condition  
7 eligibility to take the written examination on the  
8 candidate's score on any of the previous components of the  
9 examination. The written examination for a particular rank  
10 shall consist of matters relating to the duties regularly  
11 performed by persons holding that rank within the department.  
12 The examination shall be based only on the contents of  
13 written materials that the appointing authority has  
14 identified and made readily available to potential examinees  
15 at least 90 days before the examination is administered. The  
16 test questions and material must be pertinent to the  
17 particular rank for which the examination is being given. The  
18 written examination shall be administered after the  
19 determination and posting of the seniority list, ascertained  
20 merit points, and subjective evaluation scores. The written  
21 examination shall be administered, the test materials opened,  
22 and the results scored and tabulated.

23 (b) Written examinations shall be graded at the  
24 examination site on the day of the examination immediately  
25 upon completion of the test in front of the observers if such  
26 observers are appointed under Section 25, or if the tests  
27 are graded offsite by a bona fide testing agency, the  
28 observers shall witness the sealing and the shipping of the  
29 tests for grading and the subsequent opening of the scores  
30 upon the return from the testing agency. Every examinee shall  
31 have the right (i) to obtain his or her score on the  
32 examination on the day of the examination or upon the day of  
33 its return from the testing agency (or the appointing

1 authority shall require the testing agency to mail the  
2 individual scores to any address submitted by the candidates  
3 on the day of the examination); and (ii) to review the  
4 answers to the examination that the examiners consider  
5 correct. The appointing authority may hold a review session  
6 after the examination for the purpose of gathering feedback  
7 on the examination from the candidates.

8 (c) Sample written examinations may be examined by the  
9 appointing authority and members of the department, but no  
10 person in the department or the appointing authority  
11 (including the Chief, Civil Service Commissioners, Board of  
12 Fire and Police Commissioners, Board of Fire Commissioners,  
13 or Fire Protection District Board of Trustees and other  
14 appointed or elected officials) may see or examine the  
15 specific questions on the actual written examination before  
16 the examination is administered. If a sample examination is  
17 used, actual test questions shall not be included. It is a  
18 violation of this Act for any member of the department or the  
19 appointing authority to obtain or divulge foreknowledge of  
20 the contents of the written examination before it is  
21 administered.

22 (d) Each department shall maintain reading and study  
23 materials for its current written examination and the reading  
24 list for the last 2 written examinations or for a period of 5  
25 years, whichever is less, for each rank and shall make these  
26 materials available and accessible at each duty station.

27 Section 40. Seniority points.

28 (a) Seniority points shall be based only upon service  
29 with the affected department and shall be calculated as of  
30 the date of the written examination. The weight of this  
31 component and its computation shall be determined by the  
32 appointing authority or through a collective bargaining  
33 agreement.

1 (b) A seniority list shall be posted before the written  
2 examination is given and before the preliminary promotion  
3 list is compiled. The seniority list shall include the  
4 seniority date, any breaks in service, the total number of  
5 eligible years, and the number of seniority points.

6 Section 45. Ascertained merit.

7 (a) The promotion test may include points for  
8 ascertained merit. Ascertained merit points may be awarded  
9 for education, training, and certification in subjects and  
10 skills related to the fire service. The basis for granting  
11 ascertained merit points, after the effective date of this  
12 Act, shall be published at least one year prior to the date  
13 ascertained merit points are awarded and all persons eligible  
14 to compete for promotion shall be given an equal opportunity  
15 to obtain ascertained merit points unless otherwise agreed to  
16 in a collective bargaining agreement.

17 (b) Total points awarded for ascertained merit shall be  
18 posted before the written examination is administered and  
19 before the promotion list is compiled.

20 Section 50. Subjective evaluation.

21 (a) A promotion test may include subjective evaluation  
22 components. Subjective evaluations may include an oral  
23 interview, tactical evaluation, performance evaluation, or  
24 other component based on subjective evaluation of the  
25 examinee. The methods used for subjective evaluations may  
26 include using any employee assessment centers, evaluation  
27 systems, chief's points, or other methods.

28 (b) Any subjective component shall be identified to all  
29 candidates prior to its application, be job-related, and be  
30 applied uniformly to all candidates. Every examinee shall  
31 have the right to documentation of his or her score on the  
32 subjective component upon the completion of the subjective

1 examination component or its application.

2 (c) Where chief's points or other subjective methods are  
3 employed that are not amenable to monitoring, monitors shall  
4 not be required, but any disputes as to the results of such  
5 methods shall be subject to resolution in accordance with any  
6 collectively bargained grievance procedure in effect at the  
7 time of the test.

8 (d) Where performance evaluations are used as a basis  
9 for promotions, they shall be given annually and made readily  
10 available to each candidate for review and they shall include  
11 any disagreement or documentation the employee provides to  
12 refute or contest the evaluation. These annual evaluations  
13 are not subject to grievance procedures, unless used for  
14 points in the promotion process.

15 (e) Total points awarded for subjective components shall  
16 be posted before the written examination is administered and  
17 before the promotion list is compiled.

18 Section 55. Veterans' preference. A person on a  
19 preliminary promotion list who is eligible for veteran's  
20 preference under any law or agreement applicable to an  
21 affected department may file a written application for that  
22 preference within 10 days after the initial posting of the  
23 preliminary promotion list. The veteran's preference shall  
24 be calculated as provided in the applicable law and added to  
25 the applicant's total score on the preliminary promotion  
26 list. Any person who has received a promotion from a  
27 promotion list on which his or her position was adjusted for  
28 veteran's preference, under this Act or any other law, shall  
29 not be eligible for any subsequent veteran's preference under  
30 this Act.

31 Section 60. Right to review. Any affected person or party  
32 who believes that an error has been made with respect to

1 eligibility to take an examination, examination result,  
2 placement or position on a promotion list, or veteran's  
3 preference shall be entitled to a review of the matter by the  
4 appointing authority or as otherwise provided by law.

5 Section 65. Violations.

6 (a) A person who knowingly divulges or receives test  
7 questions or answers before a written examination, or  
8 otherwise knowingly violates or subverts any requirement of  
9 this Act commits a violation of this Act and may be subject  
10 to charges for official misconduct.

11 (b) A person who is the knowing recipient of test  
12 information in advance of the examination shall be  
13 disqualified from the promotion examination or demoted from  
14 the rank to which he was promoted, as applicable and  
15 otherwise subjected to disciplinary actions.

16 Section 900. The State Mandates Act is amended by adding  
17 Section 8.27 as follows:

18 (30 ILCS 805/8.27 new)

19 Sec. 8.27. Exempt mandate. Notwithstanding Sections 6  
20 and 8 of this Act, no reimbursement by the State is required  
21 for the implementation of any mandate created by this  
22 amendatory Act of the 93rd General Assembly.

23 Section 999. Effective date. This Act takes effect upon  
24 becoming law."